



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

THE WORKING OF THE SEAMEN'S ACT ¹

EMERSON E. PARVIN

Secretary, International Mercantile Marine Company

IN the letter of the president of the Academy inviting me to be one of the speakers on this occasion on the topic, "Safety at Sea, and the Protection of American Seamen," he stated that the symposium would present the different views of the probable working of the Seamen's Act. The title of this act is: "An act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea." It is somewhat significant that the president of the Academy puts safety at sea first, while the author of the bill mentions it last.

Although the act did not come into force as to American vessels until November 4th instant, a scrutiny of its provisions by practical men not only revealed its inadequacy to fulfil the high promise of its title, but also demonstrated that it would be a powerful weapon against the upbuilding of an American merchant marine, legislation to accomplish which was specifically promised in the platform adopted at Baltimore on which the present Administration went into office. Consequently, another title has now been suggested for the bill, *viz.*: "An act to discourage American shipping; to involve the Administration in irritating controversies with friendly powers; and to ensnare the votes of organized labor."

The bill was passed without a roll-call in either house, and became a law by the signature of the President on March 4th, 1915, in his room at the Capitol. When he left the White House two hours earlier he was still uncertain as to what he would do with the bill, and he took it along with him. One

¹ Read at the meeting of the Academy of Political Science, November 13, 1915.

of the Senators who was largely responsible for the passage of this legislation, according to the *Providence Journal* of March 8th, "boasted of the fact that he was a landlubber; that he had nothing to do with the framing of the bill; he was ignorant of the subject-matter, and had no intelligent notion of its possible effects and consequences except that he was sure (and in this he was undoubtedly right) that it was satisfactory to the lobby which represented the Seamen's Union."

The reputed author of the bill is Mr. Andrew Furuseth, president of the Seamen's Union, who was one of the delegates from the United States to the International Conference on Safety of Life at Sea which met in London in the fall of 1913, the convention being signed at London, January 20th, 1914, an authenticated copy of which was sent to the Senate by the President March 17th, 1914, but never ratified by that body.

The convention embodied the unanimous conclusions of the international conference, which was comprised of the representatives of the fourteen principal maritime nations and of three of the self-governing British dominions. The Secretary of State, in his letter of transmittal, says under date of March 13th, 1914:

The conference was called in a large measure upon the suggestion of the government of the United States, and the advice of the American delegation was influential upon a great many particulars which entered into this convention. The conference was composed of men trained to the sea and experienced in the administration of the laws relating to maritime affairs, and its unanimous conclusions carry weight on the matters of which the convention treats. The American delegates, who took an active part in the framing of every article and regulation of the convention, are agreed that the international standards for the safety of life at sea thus proposed to be established are higher than those of any nation now in force, and that the ratification of the convention will secure benefits for humanity by the joint action of maritime nations which could not be accomplished by any one nation, however powerful upon the sea.

The words of the Secretary of State quoted above, "The American delegates who took an active part in the framing of every article and regulation of the convention," are well

chosen, for one of the American delegates, the president of the Seamen's Union, the same Mr. Andrew Furuseth, was not one of those who had the honor of framing these praiseworthy rules and regulations, having resigned and returned to the United States when it became evident that he could not force his views upon the whole convention.

Why the Senate would not ratify this convention as a whole is a question I cannot answer, but in the light of the subsequent legislation which Congress passed, and which is the subject now before this meeting, the attitude of Congress is at least interesting. It is true the life-saving provisions of the convention are incorporated in the Seamen's Bill, and are being complied with by owners of American steamers at considerable cost, while steamers of foreign countries whose inspection laws approximate our own are exempt under the ruling of the Attorney General of the United States.

The act is now a law. The word "law" means a rule of action established by authority, and hence a law must be obeyed by those who created the power that made it. This truth was recognized and acted upon by the Pacific Mail Steamship Company when they found that it would be impossible to continue the operation of their ships and comply with the law.

The first hardship which the Pacific Mail Company foresaw in the bill was the language test. It is well known that the ability to meet competition depends upon the efficiency and economy of operation. Wages often form the crux of the situation, and they were of first importance to the Pacific Mail, which even with low-priced labor was not in ordinary times able to show earnings commensurate with the investment and an adequate reward for the experience and skill required in operation. The act provides that no ship of any nationality

shall be permitted to depart from any port of the United States unless she has on board a crew not less than seventy-five per centum of which, in each department thereof, are able to understand any order given by the officers of such vessel, nor less than forty per centum, in the first year, forty-five per centum in the second year, fifty per centum in the third year, fifty-five per centum in the fourth

year after the passage of this act, and, thereafter, sixty-five per centum of her deck crew, exclusive of licensed officers and apprentices, are of a rating not less than able seamen.

This language is perfectly plain; the result would be that no American ship could carry other than an English-speaking crew, in all departments, and must therefore go out of business; for with equal rates for freight and passengers it would be impossible to meet the competition of the Japanese ship which has the benefit of a low wage scale, low subsistence cost, and in addition receives a most substantial subsidy from the Japanese government, ranging from \$238,000 to \$1,340,000 gold per annum. Furthermore, as the Japanese ships and ships of other foreign nations are today manned by native officers and crew, it follows that the crew understand all orders given them in every department of the ship. As the requirements above referred to will apply to European ship-owners equally with American, after March 4th, 1916, there will be no encouragement for such owners to try their luck on the Pacific in competition with ships so advantageously placed as to wages and costs as the Japanese.

The sale by the Pacific Mail Steamship Company of five of their ships immediately brought forth a very strong protest from the Department of Commerce, and the general manager of the company was criticized by the head of the Department of Commerce for acting as he did. The Secretary of Commerce stated in a letter to the Secretary of the Treasury, dated October 7th, 1915, that he was astonished that a great business should be thus sacrificed (if this indeed were the case) without the least inquiry upon the subject from the sole available certain source of information, and that the alleged basis of the proposed sale of the ships was not a basis which existed in fact.

The Secretary then goes on to say that the Pacific Mail should have complied with the law for a period of not less than six months after learning how the department construed the law, and thus be in position to come before Congress with the actual results of such experience. In other words, ruin your business, and lose a chance to sell your ships on a willing

market at a minimum of loss, and then come to Congress and ask for—what? Sympathy? Redress? It is not likely that a company devoid of enough sense to fly from a coming storm would, after being wrecked by ill-advised legislation, be considered worthy of consideration by a Congress which has been described as acting with respect to the Seamen's Bill "as completely subjugated by organized labor, or grossly careless of the effect of the legislation it enacts." As the president of the Pacific Mail Company stated, "even if it were in the power of the Secretary to construe away the noxious provisions, what reason had the Pacific Mail Company to believe that the power behind the throne which secured the law would permit a disregard of the very provisions which that power most valued?" And it might be added, as expressed in a recent issue of the *New York Journal of Commerce*, that if the language test can be construed away, it is pertinent to ask why this requirement was made in regard to any crew containing foreigners?

The Secretary of Commerce, who must administer the law, has already issued several circulars limiting and softening some of the objectionable features of the act, but even this action, which to the layman seems like individual and not congressional interpretation, may not be final, for the object of the bill was to promote the interests of the Seamen's Union, which union will hardly be satisfied, after so many years of hard work, with an emasculated measure. However, the Secretary of Commerce, being placed by this act in a difficult position, will naturally do what he can to satisfy all concerned, and in so doing very likely satisfy no one, for only a day or two ago the department received a telegram from Mr. Furu-
seth, president of the Seamen's Union, dated San Francisco, protesting against the stringent provisions of the physical examination section of the new law. He wants concessions made to some of the seamen; for instance, for those who were rejected because of poor eyesight, for one man who had only one eye, for another because he had lost two fingers. Mr. Furu-
seth claims these men can perform their duties as well as men who have not suffered such afflictions. It would appear that

the jobs of some of the members of the union were in jeopardy because of the Seamen's Act, and they must be excused from complying with its very wise provisions. A concrete illustration of the actual working of the act is furnished in the following telegram from the San Francisco office of our company, which recites the difficulties encountered at the sailing of the steamer *Mongolia*, the last of the steamers bought by the Atlantic Transport Company from the Pacific Mail S.S. Co.:

SAN FRANCISCO, NOV. 10, 1915.

P. A. S. FRANKLIN,

9 Broadway, New York.

Steamship *Mongolia* sailed 1.30 P. M. Anchored Bay Tuesday noon pending slight engine repairs with full complement, according law, certified seamen and lifeboatmen. Union launch about 2 P. M. took off 8 seamen after they had struck owing refusal commander advance wages fifty per cent. Steamer left anchorage with 4 A. Bs aboard. Replaced all vacancies by 8 P. M. Collector Customs notified commander 10 P. M. that ship could not proceed to sea as sworn affidavit had been made that she was short of certified seamen. Took commander and 4 men off this morning, had them certified, passed, proceeded on board. Meantime union launch had taken off two quartermasters. As about proceed supply vacancies all launches and tugboats harbor refused take off any non-union seamen. Finally procured launch got needed men aboard, ship sailed immediately. Most disgraceful incident and discloses workings new Seamen's Law. Ship picketed constantly with men offering liquor sailors and firemen endeavoring persuade crew leave ship offering higher wages good positions.¹

The company which I have the honor to represent is doing everything possible to comply with the terms of the act, and should an adverse situation develop through circumstances over which we have no control, the Secretary of Commerce has intimated that he will take into consideration an honest effort on the part of the shipowner; will construe the law in a fair spirit, and assist the owner in his efforts to comply with the law.

No company objects to rules and regulations, wisely deter-

¹ See p. 123.

mined upon, and practical in their application, without respect to the cost thereof. What they object to strongly in this act is, first, the evident purpose of the author to bring about a world-wide seamen's union which shall say whom the owners shall employ and what wages shall be paid; and second, the fact that while the war lasts the American merchant marine has to carry the whole burden of the law and continue in these adverse circumstances to do business on a competitive basis; and the burdens thus placed upon the American ship are in excess of those found in the maritime legislation of any nation with which American vessels are expected to compete.

We may as well here eliminate from the discussion the provisions of the act with respect to flogging, butter and water. Flogging was illegal before the Seamen's Act was passed. As to the increase in the amount of butter and water provided for by the bill, an examination of the printed crew bill-of-fare of an American steamer—for instance, the Philadelphia of the American Line—would disclose at once the intention behind the provision, which was to create a false sentiment in favor of the sailor. This applies also to the flogging clause in the act.

Section 4, which provides for the payment of one-half part of the wages of a seaman to which he is entitled at every port where the vessel loads or delivers cargo before the voyage is ended, will result in great hardship to the average sailor's family when he is away from home; for he is improvident, and subject to temptations of the worst sort. It will militate strongly against the efficiency of the men, and it consequently bears directly upon the question of safety.

But a full realization of the effect of this payment of half-wages cannot be had except it be considered in connection with section 7, which minimizes the offense of desertion, and section 17, which abrogates provisions in treaties for the arrest of deserters. The combination of these provisions produces a situation which is simply iniquitous. A seaman can desert and forfeit only his kit and the amount of wages due him, which under the half-pay clause will be nothing. For example, a sailor can sign on in Liverpool for the voyage to New York

and return. When he arrives here he can demand one-half his wages, receive the amount, then desert, and there is no power given American officials to arrest him. He re-ships on the steamer or any other vessel, and the union will see to it that the captain gets no seamen at less than the wages of the port. This the owner must submit to, or have his ship tied up. However, when that deserter arrives at Liverpool again, the law of his country can deal with him, and should that law be enforced, he will have to pay to the owner whatever difference in the wages there was between what he would have received had he remained in the ship and what it was necessary for the owner to pay to a substitute. The evil of this is that there will constantly be cases of insubordination, quarrels, lowering of the moral tone of the profession, and breakdown in discipline, and it is in this last respect that the question of safety is involved. It is an uncontroverted fact that the higher you raise the standard of discipline, the more you will promote safety at sea.

The provision in section 5 for the appointment of a commission to determine the seaworthiness of a vessel, her provisioning, equipment and manning, has been cleverly worded to place in the power of the crew alone while in a foreign port, by threat or for spite, to secure the enforcement of unreasonable demands. The wording should be, "upon a complaint in writing signed by the first or second officer and (not or) a majority of the crew."

We now come to section 13, reciting the qualifications of able seamen, and the percentages of the deck crew to which reference was made in the first part of the paper. This provision places the deck crew absolutely under the control of the union, for it will only be necessary for the officials of the union to prevent a sufficient number of certificated seamen from joining a steamer to cause her to be refused clearance. I will not take time to recite the qualifications of an able seaman as given in the act, but it is fair to say that there is a wide difference between the duties of an able seaman in the days of the sailing ship and those of an able seaman on a modern ocean liner which now carries passengers to and from foreign ports, pro-

pelled by steam, and with no sails and as little rigging as will suffice to look shipshape. However, objections to these requirements may be less when it is demonstrated that there are enough seamen to qualify, except that in the meantime it is more than probable that those who do qualify will soon come forward with the question, "Well, what is there in this for us?"

In fact, the *New York Times* of the 5th instant stated:

The National Seamen's and Firemen's Union has been complaining at the trouble the men have to take in getting certificates and the severity of the medical examination they have to pass. Delegates at the shipping offices yesterday were urging the men to demand an extra \$5 a month for getting the certificates.

A certificate does not make a man a better seaman, but simply justifies the statement when he signs on as able seaman, and should not carry with it an increase in wages for simply proving his ability by certificate. Legislation will not make sailors; a sailor is one of a competitive class of workers like thousands of others, and especially the American sailor who must compete with the merchant marine of nations having 90% of the ocean-going tonnage of the world.

Right here it may be proper to answer the question: Why is there such a scarcity of American seamen? Because the United States is not an over-populated country. Emigration of native Americans is of very small proportions, for the reason that opportunities are so good at home; and furthermore the wages of a sailor, fixed of course by the law of supply and demand when labor is free, are not attractive to a young American compared with the remuneration to be had for no more effort and much less risk in other lines of endeavor.

This is not so in Great Britain, Germany, Belgium, and other densely populated countries. In them the seafaring life offers opportunities not found on land, and hence the sailors of the world are foreigners principally, and will continue to be so until conditions in the United States approximate those in the countries named above. Since the elimination of our American marine after the civil war, the salt has gradually

dried up in the veins of the American boy, and even should you double the wages, you could not get American boys to follow the sea.

Another unwise provision in section 13 is that which provides that upon the sworn information of any reputable citizen of the United States stating that the provisions with respect to the language test and quota of able seamen have not been complied with, the collector of customs may cause a muster of the crew of the vessel to determine the fact, and no clearance will be given a vessel shown not to be complying with the section. This not only encourages desertions, but deliberately places a premium upon the breach of the seaman's contract, thus increasing the risk of the voyage. It places within the power of individual or combined deserters to blackmail any vessel into a new contract to secure its clearance. A deserter may not only break his contract with but a minimum of loss of wages, but also can hold up the vessel by calling attention to the contract which his own bad faith can create, and then he can force a new contract no better protected than the first one, and cause delay and loss, jeopardizing the ship itself and completely upsetting all discipline.

Section 16, which provides for the giving of the required notice of termination of those articles in treaties with foreign powers respecting arrest and imprisonment of officers and seamen deserting or charged with desertion, will, in the words of another, "likely involve the United States in many unpleasant controversies; will risk continuance of many conventions dealing with general commercial relations in which the provisions affected by the Seamen's Bill are merely incidental." Furthermore, as we are all bound up together in our commercial relations, and can prosper only as we give and take, it is fair to suppose that any unwise legislation on our part will provoke retaliatory action on the part of those who are put to a disadvantage thereby.

Finally, it goes without saying that adequate ocean transportation can be secured only by making ownership and operation of vessels profitable. Maritime legislation should contemplate the welfare of the public (not seamen only). It

should consider those whose enterprise and investment make the operation of steamship lines possible. The Seamen's Bill was drawn for the benefit not of all the men employed on a ship, but only for those who belong to, or who will be persuaded to join, the Seamen's Union. It was drawn without a thorough knowledge of conditions, and without proper regard for the public welfare, and consequently for the safety of those who trust themselves to travel by water, or for the interests of owners and operators of maritime property affected by it.

What ought to be done? I beg leave to suggest that the action of the governors of India House, New York, an association of men whose object is the encouragement of the foreign commerce of the United States and the cultivation and perpetuation of American trading traditions, should be endorsed. Their recommendation was that authority be conferred on the President to suspend the operation of such of the provisions of the Seamen's Act as he shall consider detrimental to the public interests until the entire subject of the development of the American merchant marine can be dealt with on a basis of permanency; and that Congress create a permanent commission or shipping board composed of men experienced in shipping and in foreign trade, with authority to investigate all shipping problems and submit to Congress recommendations for legislation covering the following subjects:

- (a) The revision, amendment or repeal of the Seamen's Act.
- (b) The revision of the navigation laws and rules and regulations based thereon.
- (c) The establishment of regulations concerning the structural strength, equipment and load-line of vessels.

EDITORIAL NOTE.—Since Mr. Parvin read the foregoing paper, the Academy has received from Secretary Redfield a request to attach the following copy of a letter from the Secretary to Mr. Franklin:

Sir:

NOVEMBER 17, 1915.

The Department is just in receipt of a telegram from the collector of customs at San Francisco, California, giving the result of his investigation in regard to the matter of the sailing of the Mongolia from that port on November 9, 1915.

From such report it appears that the *Mongolia* was actually granted clearance at about ten o'clock on November 9 and departed later in the day, stopping, however, at anchorage somewhere in the bay. At eight p. m. on that same evening, and eight and one-half hours after the departure of the vessel, the collector was called over the telephone by Andrew Furuseth, who stated that he desired to file an affidavit to the effect that the *Mongolia* did not have on board the required number of able seamen; that the collector accepted service on the complaint, with the understanding that the written one was to be filed in his office on the following morning, and thereupon made efforts to, and did actually, notify the officers of the ship that he would cause a muster of the crew to be made on the morning of the 10th instant, thus preventing the vessel from proceeding on her voyage until that time. The collector further reports that on the morning of November 10 the master of the vessel and the agent and a Mr. Love of New York appeared before him with the information that they had obtained a sufficient number of men ready for medical examination to complete the legal number of certificated able seamen, but would be unable to have them promptly examined by the Marine Hospital Service; that the collector thereupon made arrangement to have these men examined immediately; that they passed the examination and the ship sailed that afternoon. The collector still further reports that a day or two later Mr. Swain, the agent, and Mr. Love called at his office concerning the filing of a protest for submission to the Department against the collector of customs for interfering with the departure of a vessel under any circumstances subsequently to the granting of clearance, at the same time telling him that the holding of the *Mongolia* in this case had caused no inconvenience or delay and they had no complaint to make concerning that incident. The collector also states that he took the action he did after consulting with Special Deputy Collector Brown, Chief of the Law Division. He also caused an investigation to be made concerning the status of the men who deserted the *Mongolia* on November 9 and was informed by the local inspectors of steam vessels that only two of such eight men held certificates as able seamen.

Concerning the labor troubles incident to the departure of the *Mongolia*, he reports that information was given him to the effect that the men involved were Germans who were signed on at New York to ship on the steamer *Kroonland* to San Francisco and back to New York; that while in San Francisco the destination of the

Kroonland for the return voyage was changed from New York to London and, inasmuch as these German sailors could not be taken to London, the company gave them their choice of being discharged in San Francisco or transferred to the Mongolia for the return to New York at \$30 per month; that these men after signing articles for the Mongolia ascertained that the wages at San Francisco for New York were \$45 per month and asked the secretary of the Sailors' Union whether they had a right to quit the vessel if they could not obtain such wages, and were advised by him that they could do so; that thereupon they made a demand for such regular wages, which was refused, and they were then assisted by the Sailors' Union to leave the vessel; that there was no inducement offered to the men whatsoever to leave the vessel, nor was there any liquor used. The firemen also wanted to leave the vessel, but the Seamen's Union refused to assist or encourage them to do so under the conditions.

In receiving and acting upon the complaint filed by Mr. Furuseth, the collector of customs unquestionably exceeded his authority under the statute, and the Department has this day called his attention to the same. He had no right whatever to act upon the complaint or to stop the vessel and order a muster of the crew after the vessel had departed. The statute is quite clear and admits of no misconstruction. The complaint, in order that the collector be required to act upon it, must be filed prior to the expiration of six hours before the departure of the vessel or the time she is scheduled to depart, and unless this is complied with, there is no obligation on the collectors of customs to do either and they are not expected to. To do otherwise would defeat the purpose of the provision, namely, to prevent delay in the departure of vessels. In order to avoid further occurrences of this nature, all collectors of customs have this morning been notified to the above effect.

It is quite evident from the reports received by the Department concerning the Mongolia that the delay was not caused by any provisions of the Seamen's Act, but through a misconstruction of certain provisions of section 13 of that Act on the part of the collector at San Francisco.

Yours very truly,

(Signed) WILLIAM C. REDFIELD,

Secretary.

Mr. P. A. S. FRANKLIN,
Receiver International Mercantile Marine Co.,
9 Broadway,
New York City.